

1 Thomas P. Mazzucco - 139758  
2 Aaron K. McClellan - 197185  
3 Bryan L. P. Saalfeld - 243331  
4 Nicholas C. Larson - 275870  
5 MURPHY, PEARSON, BRADLEY & FEENEY  
6 88 Kearny Street, 10th Floor  
7 San Francisco, CA 94108-5530  
8 Tel: (415) 788-1900  
9 Fax: (415) 393-8087  
10 E-Mail [tmazzucco@mpbf.com](mailto:tmazzucco@mpbf.com)  
11 [amcclellan@mpbf.com](mailto:amcclellan@mpbf.com)  
12 [bsaalfeld@mpbf.com](mailto:bsaalfeld@mpbf.com)  
13 [nlarson@mpbf.com](mailto:nlarson@mpbf.com)

14 Geoffrey Potter (admitted *pro hac vice*)  
15 Christos G. Yatrakis (admitted *pro hac vice*)  
16 PATTERSON BELKNAP WEBB & TYLER LLP  
17 1133 Avenue of the Americas  
18 New York, NY 10036  
19 Telephone: (212) 336-2000  
20 Fax: (212) 336-2222  
21 E-Mail [gpotter@pbwt.com](mailto:gpotter@pbwt.com)  
22 [cyatrakis@pbwt.com](mailto:cyatrakis@pbwt.com)

23 Attorneys for Plaintiffs  
24 INNOVATION VENTURES, LLC and LIVING ESSENTIALS, LLC

25 UNITED STATES DISTRICT COURT  
26 NORTHERN DISTRICT OF CALIFORNIA

27 INNOVATION VENTURES, LLC and LIVING  
28 ESSENTIALS, LLC.

Plaintiffs,

-against-

PITTSBURG WHOLESALE GROCERS, INC.,  
d/b/a PITCO FOODS, et al.,

Defendants.

12 Civ. 5523 (WHA)

**STIPULATION AND ORDER**

FILED UNDER SEAL

23 UPON THE STIPULATION AND AGREEMENT by and between the undersigned counsel  
24 for Plaintiffs Innovation Ventures, LLC, and Living Essentials, LLC, (together, "Plaintiffs"), and  
25 defendants Santa Monica Distributing, Inc., Manoucherhr Heikali a.k.a. David Heikali, and Aziz  
26 Heikali a.k.a. Ed Heikali (collectively, the "Santa Monica Defendants"), it hereby is ORDERED as  
27 follows:  
28

**RECEIVED**

NOV - 7 2012

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**FILED**



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**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1           1.     The Santa Monica Defendants acknowledge having been served with the following  
2 documents and waive any defenses as to personal or subject matter jurisdiction with respect to these  
3 documents: Summons and Complaint; Order to Show Cause for a Temporary Restraining Order and  
4 Preliminary Injunction, including the supporting Declarations and Memorandum of Law; and  
5 Seizure Order.  
6

7           2.     For purposes of this stipulation, the "5 HOUR ENERGY Marks" are:

- 8           •     "5 HOUR ENERGY" (Registration No. 3,003,0770);  
9           •     "5-HOUR ENERGY" (Registration No. 4,004,225);

- 10           •      (Registration No. 4,104,670);  
11           •      which includes the wording "5-hour ENERGY" in black outlined in  
12 yellow, below which are the words "EXTRA STRENGTH" in yellow, along  
13 with a person in black silhouette, outlined in yellow, shown in an athletic pose  
14 adjacent to an uneven landscape, with the sky depicted in transitioning colors  
15 from black to red as the sky meets the landscape (Registration No. 4,116,951);  
16  
17  
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20

- 21           •     , commonly referred to as "Running Man," (Registration No. 3,698,044);  
22 and  
23  
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25  
26  
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28



- which includes the wording "5-hour ENERGY" in black outlined in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from red to yellow as the sky meets the landscape (Registration No. 4.120,360).

3. The Santa Monica Defendants and their agents, servants, employees, and all other persons in active concert and participation with them, pending the final hearing and determination of this action are preliminarily enjoined from:

- (a) using any of the 5 HOUR ENERGY Marks (or any marks confusingly similar thereto) on any counterfeit product in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;
- (b) using any logo, trade name or trademark confusingly similar to any of the 5 HOUR ENERGY Marks which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of the Santa Monica Defendants or of others are sponsored by, authorized by or in any way associated with Plaintiffs;
- (c) infringing any of the 5 HOUR ENERGY Marks;
- (d) otherwise unfairly competing with Plaintiffs in the manufacture, sale, offering for sale, distribution, advertisement, or any other use of dietary supplements;
- (e) falsely representing themselves as being connected with Plaintiffs or sponsored by or associated with Plaintiffs or engaging in any act which is likely to cause the trade, retailers and/or members of the purchasing public to believe that they or the other defendants are associated with Plaintiffs;

- 1 (f) using any reproduction, counterfeit, copy, or colorable imitation of any of the 5  
2 HOUR ENERGY Marks in connection with the publicity, promotion, sale, or advertising of  
3 dietary supplements;
- 4 (g) affixing, applying, annexing or using in connection with the sale of any goods, a false  
5 description or representation including words or other symbols tending to falsely describe or  
6 represent such goods as being 5-Hour ENERGY® and from offering such goods in  
7 commerce;
- 8 (h) diluting any of the 5 HOUR ENERGY Marks;
- 9 (i) buying, selling, transferring (other than to Plaintiffs or law enforcement officials),  
10 altering, or destroying any counterfeit products with the 5 HOUR ENERGY Marks;
- 11 (j) destroying any records documenting the manufacture, sale, offer for sale, distribution,  
12 advertisement or receipt of any product purporting to be 5 HOUR ENERGY®; and
- 13 (k) assisting, aiding or abetting any other person or entity in engaging in or performing  
14 any of the activities referred to in subparagraphs (a) through (j) above.
- 15
- 16

17 4. Plaintiffs and the Santa Monica Defendants stipulate that, as among them,  
18 there are no issues to address at the hearing scheduled for November 7, 2012, with respect to  
19 the Seizure Order and Order to Show Cause. The Santa Monica Defendants waive any and  
20 all rights they might have to a hearing to contest the seizure executed at 3180 Olympic  
21 Boulevard, Santa Monica, California 90404 on November 1, 2012 or to a hearing to  
22 challenge the issuance of a preliminary injunction.

23

24 5. Plaintiffs and their surety, American Contractors Indemnity Company, are  
25 released from any and all liability under the bonds filed in this case (including Bond Nos.  
26 1000772114 and 1000772115) and the seizure executed against the Santa Monica Defendants  
27 at 3180 Olympic Boulevard, Santa Monica, California 90404 is hereby confirmed.

28

6. Signatures transmitted electronically or by facsimile shall be deemed original.

Dated: 11/7, 2012

CONSENTED AND AGREED TO BY:

PATTERSON BELKNAP WEBB & TYLER LLP

THE SANTA MONICA DEFENDANTS

By: 

Geoffrey Potter

gpotter@pbwt.com

Christos Yatrakis

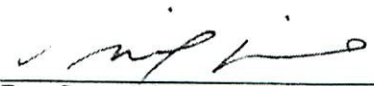
cyatrakis@pbwt.com

1133 Avenue of the Americas

New York, New York 10036

(212) 336-2000


Attorneys for Plaintiffs

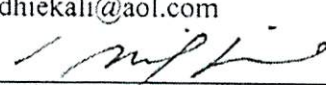
  
For: Santa Monica Distributing, Inc.

3180 Olympic Boulevard

Santa Monica, California 90404

(310) 453-9197

  
Manoucherhr Heikali a.k.a. David Heikali  
dheikali@aol.com

  
Aziz Heikali a.k.a. Ed Heikali  
azizsmde@aol.com

SO ORDERED:



UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Tanya L. Hill, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On November 7, 2012, I served the following document(s) on the parties in the within action:

STIPULATION AND ORDER

	<b>BY MAIL:</b> I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as follows:
	<b>BY HAND:</b> The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:
X	<b>VIA FACSIMILE:</b> The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:

Manoucherhr Heikali  
Santa Monica Distributing, Inc.  
aka David Heikali  
3180 West Olympic Boulevard  
Santa Monica, CA 90404  
FAX: 310-453-9178

Attorney For Manoucherhr Heikali  
IN PRO PER

Aziz Heikali  
Santa Monica Distributing, Inc.  
aka Ed Heikali  
3180 West Olympic Boulevard  
Santa Monica, CA 90404  
FAX: 310-453-9178

Attorney For Aziz Heikali aka Ed Heikali  
IN PRO PER

X	<b>VIA E-MAIL:</b> Based on a court order or an agreement of the parties to accept service by e-mail, I attached the above-described document(s) to an e-mail message, and invoked the send command to transmit the e-mail message to the person(s) at the following e-mail address(es). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
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Jennifer Lee Taylor  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
E-Mail: [jtaylor@mofo.com](mailto:jtaylor@mofo.com)  
[wgarbers@mofo.com](mailto:wgarbers@mofo.com)  
[mpoe@mofo.com](mailto:mpoe@mofo.com)

Attorney For Defendants  
PITTSBURG WHOLESALE GROCERS, INC.,  
D/B/A PITCO FOODS; PACIFIC  
GROSERVICE, INC. D/B/A PITCO FOODS;  
ARISTOTLE PERICLES NAVAB; DAVID  
LUTTWAY

1 Thomas Suh  
2 LTL Trial Attorneys  
1835 West Orangewood Avenue, Suite 330  
3 Orange, CA 92868  
E-Mail: [ts@ltlatorneys.com](mailto:ts@ltlatorneys.com)

Attorney For Defendants  
KOAMEX GENERAL WHOLESALE, INC.,  
YOUNG H. KIM A.K.A. YONG HWAM KIM

4 Randolph Gaw  
5 The Gaw Group  
100 Pine Street, Suite 1250  
6 San Francisco, CA 94111  
E-Mail: [rgaw@thegawgroup.com](mailto:rgaw@thegawgroup.com)

Attorney For Defendant  
ELITE WHOLESALE INC.

7 Randolph Gaw  
8 The Gaw Group  
100 Pine Street, Suite 1250  
9 San Francisco, CA 94111  
E-Mail: [rgaw@thegawgroup.com](mailto:rgaw@thegawgroup.com)

Attorney For Defendant  
TONIC WHOLESALE, INC., D/B/A ACE  
WHOLESALE

10 Randolph Gaw  
11 The Gaw Group  
100 Pine Street, Suite 1250  
12 San Francisco, CA 94111  
E-Mail: [rgaw@thegawgroup.com](mailto:rgaw@thegawgroup.com)

Attorney For Defendant  
DAPAN USA CORP. D/B/A FRONTIER  
WHOLESALE; SUNG KEUN LEE

13 Steven A. Elia  
14 The Law Offices of Steven A. Elia, APC  
2221 Camino Del Rio South, Suite 207  
15 San Diego, CA 92108  
Tel: (619) 444-2244  
16 E-Mail: [steve@elialaw.com](mailto:steve@elialaw.com)

Attorney For Defendants  
DAN-DEE COMPANY, INC.; FADI ATTIQ;  
KEVIN ATTIQ

17 Randolph Gaw  
18 The Gaw Group  
100 Pine Street, Suite 1250  
19 San Francisco, CA 94111  
Tel: (415) 745-3308  
20 E-Mail: [rgaw@thegawgroup.com](mailto:rgaw@thegawgroup.com)

Attorney For Defendant  
SUNG KEUN LEE

21 William Markham  
22 Maldonado & Markham, LLP  
550 West C Street, Suite 2040  
23 San Diego, CA 92101  
[wm@maldonadomarkham.com](mailto:wm@maldonadomarkham.com)

Attorney For Defendants  
DAN-DEE COMPANY, INC.; FADI ATTIQ;  
KEVIN ATTIQ

24  
25 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
26 a true and correct statement and that this Certificate was executed on November 7, 2012.

27  
28 By 

Tanya L. Hill